IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2186 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI TRIKAMLAL N.SHAH

Versus

BANK OF INDIA THROUGH ITS CHAIRMAN

Appearance:

1. Special Civil Application No. 2186 of 1984

MR PK JANI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

SERVED BY RPAD - (R) for Respondent No. 1

MR NANDISH CHUDGAR for NANAVATI ASSOCIATES for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has challenged the order dated 15th July, 1983, passed by the

Disciplinary Authority, by which the petitioner was ordered to be dismissed from service, as also the order dated 4.1.1984, by which the Departmental appeal of the petitioner came to be rejected.

2. It is the case of the petitioner that the petitioner joined the services of the respondent No.1 Bank of India on 1.2.1955 as a Clerk and thereafter received periodic promotions from time to time. It is the case of the petitioner that he had rendered 28 years of clean service, however, with respect to some alleged incidence of years 1976-77, a charge-sheet dated 28.12.1981 came to be issued against the petitioner. Pursuant to the Departmental enquiry conducted against the petitioner, the enquiry officer submitted his report to the Disciplinary Authority on 1.2.1983. The petitioner was however, not given a copy of this enquiry officers' report. By impugned order dated 15.7.1983, the Disciplinary Authority dismissed the petitioner from service. Along with the order of dismissal, the Disciplinary Authority also forwarded a copy of the enquiry officer's report to the petitioner. The petitioner being aggrieved by the said order of penalty, being dated 15.7.1983, preferred Departmental appeal against the same to the Appellate Authority, but the said appeal also came to be rejected by the Appellate Authority by an order dated 4.1.1984. It is these orders of the Disciplinary Authority as well as of the Appellate Authority that the petitioner has impugned in the present petition.

Date: 8.9.2004

3. The petitioner has challenged the impugned orders on number of grounds including that of breach of requirements of natural justice as well as on the ground of the conclusions of the Disciplinary Authority being perverse and not supported by evidence on record. In view of the conclusions that I am about to reach, it is not necessary to go into the merits or demerits of number of contentions raised by the petitioner in the present petition and the petition can be disposed of only upon examining the first contention raised by the learned Advocate for the petitioner, namely that of breach of principles of natural justice, inasmuch as according to the petitioner, the Disciplinary Authority had not issued a show cause notice indicating tentative reasons for disagreement with the findings of the enquiry officer before passing the final order of penalty after disagreeing with some of the conclusions of the enquiry officer.

4. Upon conclusion of the oral enquiry, the enquiry officer submitted his report dated 1st February, 1983. In the enquiry report, the authority came to the conclusion that article charges 6 and 7 stand proved against the petitioner, whereas article charge 5 was held to have been partly proved. Remaining charges namely charges 1 to 4 and charges 6 and 7 were held to have been not proved. It is not in dispute that the disciplinary authority while passing the final order of penalty dated 15th July, 1983, was pleased to disagree with the findings of the enquiry officer and was pleased to conclude that charge articles 1 and 2 stand proved and charge article 5 stands proved in toto. He however, agreed with the enquiry officer that the charge articles 3, 4 and 8 are not proved. The disciplinary authority had also recorded separate reasons for disagreeing with the findings of the enquiry officer as mentioned above. Having recorded the reasons, the disciplinary authority proceeded to pass the order of penalty dated 15.7.1983 and imposed a penalty of dismissal from service upon the petitioner. It is not in dispute that before passing the order of penalty, the disciplinary authority did not issue a show cause notice to the petitioner indicating tentative reasons for disagreeing with the findings of the enquiry officer and give an opportunity to the petitioner to make his representation with respect to the same.

5. Regulation 7 of the Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 provides for the action to be taken on the enquiry report. The relevant portion of the Regulation reads as under:-

> 7(1) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.
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> 7(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

6. The question therefore that is required to be considered is whether the disciplinary authority had breached the requirements of natural justice while passing the final order of penalty, in not giving a show cause notice to the petitioner indicating tentative reasons for disagreement permitting the petitioner to make his representation thereon before finally disagreeing with the findings of the enquiry officer and proceeding to pass order of penalty based on such conclusions. The issue is no longer possible of any debate. In the decision of Punjab National Bank Vs. Shri Kunj Behari Misra, reported in 1998 (2) S.C.S.L.J, the Hon'ble Supreme Court was examining a similar question wherein the Regulations of the said Bank with respect to the conduct of disciplinary enquiry against a delinquent officer were pari-materia with the Regulations of the respondent Bank. In the said case also Regulation 7(2) of the Disciplinary Appeal Regulation provided that the disciplinary authority shall, if it disagrees with the findings of the enquiry authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. Negating the contention raised on behalf of the Bank in the said case that since the said sub-Regulation does not specifically state that when the disciplinary authority disagreeing with the findings of the enquiry authority, and is required to record its own reasons for such disagreement and also to record its own findings on such charge, it is not required to give a hearing to the delinquent officer, the Hon'ble Supreme Court held that whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own finding on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The Hon'ble Supreme Court also did not accept the contentions that the order of the disciplinary authority in the said case having been passed prior to the decision of the Hon'ble Supreme Court in Union of India Vs. Mohd Ramzan Khan's case (1991 (1) SCC 588), such a requirement cannot be enforced in that matter. The Hon'ble Supreme Court also observed that the report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer and the principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation

before the disciplinary authority records its findings on the charges framed against the officer.

7. The above decision of the Hon'ble Supreme Court was also followed in the case of Yoginath D. Bagde Vs. State of Maharashtra, reported in AIR 1999 SC 3734. In the said decision the Hon'ble Supreme Court was concerned with the interpretation of Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which enabled the disciplinary authority to disagree with the findings of the enquiry authority on any article of a charge and the only requirement was that it should record its reasoning for such disagreement and the Rule did not specifically provide that before recording its own findings the disciplinary authority will give an opportunity of hearing to a delinquent officer. It was found that the requirement of hearing is in consonance with the principles of natural justice and the same have to be read into Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

8. In yet another decision of State Bank of India Vs. Arvind K. Shukla, reported in AIR 2001 SC 2398, this view was reiterated by the Hon'ble Supreme Court. In the decision of State Bank of India Vs. K.P. Narayanan Kutty, reported in AIR 2003 SC 1100, once again the Hon'ble Supreme Court interpreting Rule 50(3)(ii) of State Bank of India (Supervising Staff) Service Rules 1975, which was identical to Regulation 7(2) of the Punjab National Bank Officers Employees' (Discipline and Appeal) Regulations it was held that the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer and the contention that unless it was shown that some prejudice is caused to the delinquent the order of dismissal could not be set aside, was rejected by the Hon'ble Supreme Court.

9. From the above discussion, it can be seen that in identical situation where the relevant service regulations permitted the disciplinary authority to disagree with the findings of the enquiry authority by recording its reasons for the same and the regulations did not specifically require giving of a notice or opportunity to the delinquent officer, the Hon'ble Supreme Court found that the requirement of principles of natural justice can be read into such a rule. In the present case, Regulation 7(2) of the Bank of India Officers' Employees (Discipline & Appeal) Regulations being pari-materia with the provisions of Regulation 7(2) of the Punjab National Bank Officer Employees (Discipline

& Appeal) Regulations, the ratio of the Hon'ble Supreme Court's decisions would squarely apply to the facts of the present case.

10. I therefore, find that the disciplinary authority erred in law in passing the impugned order of penalty dated 15.7.1983 by disagreeing with the findings of the enquiry officer, without giving an opportunity to the delinquent officer to persuade the authority to accept the findings of the enquiry officer. The impugned order dated 15.7.1983 is therefore, quashed and set aside. The appellate order confirming the order of disciplinary authority dated 4.1.1984 is also quashed and set aside. Rule is made absolute accordingly with no order as to costs.

11. By quashing the impugned order of penalty, however the disciplinary proceedings cannot be concluded as held by the Hon'ble Supreme Court in number of decisions AIR 1994 SC 1074 (Mg. Director, ECIL Hyderabad Vs. B. Karunakar etc.), AIR 2003 SC 2041 (Canara Bank & ors. Vs. Shri Debasis Das & ors). etc. The proceedings have to commence from the stage where the defect has been committed. In the result, it will be open for the disciplinary authority to proceed further with the Departmental proceedings after supplying to the petitioner tentative reasons for disagreement with the findings of the enquiry officer's report and consider the matter afresh after the petitioner is permitted to make his representation to the same.

12. In view of the fact that the Departmental proceedings are very old, it is provided that the disciplinary authority, if it wishes to proceed further with the Departmental proceedings, shall give a notice to the petitioner of such intention along with tentative reasons for disagreement within a period of 8 weeks from today. If the disciplinary authority fails to give such a notice, it shall be presumed that the disciplinary authority does not wish to proceed further with the enquiry and the disciplinary proceedings shall be deemed to have been concluded. In view of the fact that the petition is disposed of only on the ground of not hearing the petitioner before disagreeing with the findings of the enquiry officer, I have not expressed any opinion on any other contention raised by the petitioner in this petition and it will be open for the petitioner to raise all such contentions in case eventually the decision of the disciplinary authority is adverse to the petitioner.

13. I am informed that by virtue of certain interim

orders passed by the Division Bench of this Court in the Letters Patent Appeal arising from this petition, the respondent Bank was ordered to pay an amount of Rs. 1 lakh to the petitioner, which has been duly paid. By order dated 25.11.1993, while disposing of the Letters Patent Appeal No. 226 of 1992 and while the Division Bench remanding the matter back to the Single Judge for further hearing and considering the Special Civil Application on merits, had provided that any disbursement made pursuant to the interim orders pending the Letters Patent Appeal shall abide the result in the Special Civil Application. In view of the fact that the order of the disciplinary authority is being set aside on a technical ground and the matter is further permitted to be proceeded with by the disciplinary authority, I find it appropriate to provide that the said amount of Rs. 1 lakh paid to the petitioner shall be governed by the final order that the disciplinary authority may pass hereinafter.

14. With these observations and directions, the petition stands disposed of.

(Akil Kureshi, J.)

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